

Legislative Brief

The Constitution (107th Amendment) Bill, 2007 and Sixth Schedule to the Constitution (Amendment) Bill, 2007

The Bills were introduced in the Lok Sabha on November 30, 2007.

The Bills were referred to the Standing Committee on Home Affairs (Chairperson: Smt Sushma Swaraj), which submitted its report on Feb 28, 2008.

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Highlights of the Bill

- ◆ The Constitution (One Hundred and Seventh Amendment) Bill, 2007 and the Sixth Schedule to the Constitution (Amendment) Bill, 2007 seek to amend the Constitution to include Gorkha Hill Council, Darjeeling in the Sixth Schedule.
- ◆ The Sixth Schedule provides for the creation of autonomous District Councils in certain tribal areas of the North-Eastern states. The Bill seeks to form a District Council for the hill areas of Darjeeling in West Bengal called the Gorkha Hill Council, Darjeeling (GHC).
- ◆ All District Councils have the power to make laws on a range of subjects such as the allotment of land, use of water course, and inheritance of property. The GHC has the power to make laws on 45 additional subjects such as agriculture, education and transport.
- ◆ The laws made by GHC cannot nullify the existing rights and privileges of any Indian citizen, including land rights, if such citizen is otherwise eligible to acquire land within that area.

Key Issues and Analysis

- ◆ Due to the prevailing situation in Darjeeling, the Standing Committee was unable to verify facts on the ground. Therefore, it accepted the views of the central and state governments and recommended that the Bills be passed with some amendments.
- ◆ The original purpose of the Sixth Schedule was to provide autonomy to the predominantly tribal areas of north-east India. Thirteen per cent of the people living in Darjeeling district belong to Scheduled Tribes.
- ◆ Scheduled Castes constitute 16 per cent of the total population of Darjeeling. The Standing Committee has recommended reservation for Schedule Castes and women in the GHC.
- ◆ The Bill does not address any of the structural issues highlighted by various official reports related to the Sixth Schedule.
- ◆ The powers devolved to the District Councils are not identical. An expert committee has recommended that the minimum powers should be stated in the Constitution.

PART A: HIGHLIGHTS OF THE BILL¹

Context

The Sixth Schedule to the Constitution was formulated to provide limited autonomy to tribal regions of north-east India based on the report of the Bardoloi Committee formed by the Constituent Assembly.² It stated that due to the administrative system followed by the British, the tribal areas of Assam were isolated from other parts of the country. Therefore, most of these areas remained severely under-developed. There was a need for a system of administration that would allow the tribal areas to become developed while protecting them from exploitation by the people in the plain areas and preserving their distinct social customs. The Bardoloi Committee drafted a Schedule to the Constitution detailing the administrative mechanism for these areas.

The Sixth Schedule designates ten tribal areas in Assam, Meghalaya, Mizoram and Tripura as autonomous districts.* It stipulates that these areas should be administered through a system of District and Regional Councils, which have legislative powers on a range of subjects such as allotment of land, inheritance of property, marriage and divorce.³

Following an agitation for autonomy in the 1980s, the Darjeeling Gorkha Hill Council Act, 1988 established the Darjeeling Gorkha Hill Council (DGHC) as an autonomous body. It had executive powers on certain subjects. An 'In Principle' Memorandum of Settlement (MOS) was signed on December 6, 2005 between the Government of India, Government of West Bengal, and Administrator, DGHC for creating an autonomous self-governing Council under the Sixth Schedule to the Constitution for the hill areas of Darjeeling. The MOS also stipulated that the existing DGHC shall be dissolved.⁴

The Constitution (One Hundred and Seventh Amendment) Bill, 2007 and the Sixth Schedule to the Constitution (Amendment) Bill, 2007 seek to amend the Constitution to include Gorkha Hill Council, Darjeeling in the Sixth Schedule.

Key Features

Table 1: Key Features of the Constitution (107th Amendment) Bill, 2007

Article	Constitution of India	Constitution (107 th Amendment) Bill, 2007
244	Provisions of the Sixth Schedule shall apply to the administration of tribal areas in Assam, Meghalaya, Mizoram, and Tripura.	Include areas under the Gorkha Hill Council (GHC) in West Bengal.
332	Provides for reservation of seats for Scheduled Castes (SCs) and Scheduled Tribes (STs) in the state legislative assemblies.	Adds that STs and non-STs from GHC constituencies to have same representation in the Legislative Assembly of West Bengal as before.

Sources: Constitution of India; The Constitution (107th Amendment) Bill, 2007; PRS.

The Bill seeks to form a District Council (DC) for the hill areas of Darjeeling in West Bengal called the Gorkha Hill Council, Darjeeling (GHC). There are variations in the powers of the existing DCs. Table 2 outlines the common powers devolved to all DCs and lists the additional powers applicable to GHC.

Table 2: Key Features of the Sixth Schedule to the Constitution (Amendment) Bill, 2007

Common provisions applicable to all DCs (including GHC)	Additional provisions specific to GHC
Constitution of Autonomous District	
Provides for the creation of autonomous districts in the tribal areas. Each autonomous district shall have a DC. Some members shall be elected while some shall be nominated by the Governor. The elected members shall hold office for five years and nominated members for a term determined by the Governor.	GHC shall include all the mouzas under Darjeeling, Kurseong and Kalimpong Sub-divisions of Darjeeling district and 18 mouzas of Siliguri Sub-division which shall be transferred to Kurseong Sub-division as notified by the Government of West Bengal. GHC shall have 33 members: 28 elected (10 ST, 15 non-tribal, 3 general); 5 nominated (minimum 2 women).
Powers and Functions of District Council	
Make laws on certain specified subjects such as the allotment of land (except reserved forests), inheritance of property, marriage and divorce. Laws related to the State List need assent of the Governor. Laws related to the Concurrent List need assent of the President. Laws enacted by a state legislature are not applicable to the DC on subjects over which the DC has the power to legislate, unless the DC so directs. The Governor may determine the applicability of any Act of the state legislature (excluding subjects on which DC can legislate) to the DC. The President has same power with regard to Acts of Parliament.	The GHC can make laws with respect to 45 other specified subjects such as management of land, animal husbandry, school, college and adult education, health, rural electrification, transport etc. The West Bengal legislature does not have the power to make laws on the subject of restriction of consumption of non-distilled alcoholic liquor in GHC, unless so directed by the GHC. [Similar provisions apply to DCs in Tripura and Mizoram.]

* Presently, they are: North Cachar Hill District, Karbi Anglong District, Bodoland Territorial Areas District, Khasi Hills District, Jaintia Hills District, Garo Hills District, Tripura Tribal Areas District, Chakma District, Mara District and Lai District.

This Bill requires 2/3rd majority in each House of Parliament.

This Bill requires simple majority in each House.

May establish primary schools, dispensaries, markets, cattle pounds etc. in the district. May prescribe the medium of instruction for primary schools with the Governor's consent. The Governor may confer functions related to agriculture, animal husbandry, community projects etc. to a DC.

Collect tax on land and buildings; levy tolls on people residing in the area; and tax for maintenance of schools etc. Excluding land revenue, the levying of all other taxes requires the Governor's approval.

The medium of instruction in educational institutions in the GHC shall not be changed without the approval of the Government of West Bengal.

Laws enacted by the GHC cannot nullify existing rights of any Indian citizen, including land rights. These laws cannot prohibit any Indian citizen from acquiring land in areas under the GHC if such citizen is otherwise eligible to acquire land within that area.

Judicial Powers of District Council

The Governor may authorise a DC to try cases related to any law applicable to the district or for the trial of offences punishable with death, transportation for life, or imprisonment for a minimum of five years under the Indian Penal Code. The Code of Civil Procedure, 1908 or the Code of Criminal Procedure, 1898 shall not apply to any trial in the district unless authorised by the Governor.

Same as other DCs

Power of Annulment and Dissolution

If the Governor feels that an Act of a DC is likely to endanger the safety of India or be prejudicial to public order, he may annul or suspend such acts. The Governor's order shall be laid before the state legislature and shall continue in force for a maximum of 12 months.

Same as other DCs

If the Governor feels that the administration of a DC cannot be carried out according to the Schedule, he may assume all powers of the DC for a maximum of six months. The order can be extended each time for a maximum of six months. The Governor may appoint a Commission to report on any specified matter. He may, on the Commission's recommendation, order the dissolution of a DC and direct that fresh elections be held immediately or assume the administration of the DC himself or place it under the Commission or any other suitable body for a maximum of 12 months.

Same as other DCs

Sources: The Sixth Schedule to the Constitution; The Sixth Schedule to the Constitution (Amendment) Bill, 2007; PRS.

PART B: KEY ISSUES AND ANALYSIS

Recommendations of the Standing Committee on Home Affairs

The Standing Committee⁵ stated that there were divergent views regarding the Bill. While the official viewpoint supported the Bill, an “overwhelming majority of representatives” that appeared before the Committee were opposed to it. The Committee could not verify the claims of the central and state governments since it could not visit the area and feel “the pulse of the people.” Therefore, relying on the official claims, the Committee recommended that both Bills be passed after certain amendments were made. It suggested that (a) 33% of the seats in the GHC should be reserved for women; and (b) an appropriate number of seats should be reserved for SCs in the GHC.

Population Composition of Darjeeling

Proportion of Scheduled Tribes

The Sixth Schedule was originally intended for the predominantly tribal areas (tribal population over 90%) of undivided Assam, which were categorised as “excluded areas” under the Government of India Act, 1935 and were under the direct control of the Governor.⁵ As per 2001 Census, all Sixth Schedule areas have tribal population ranging from 56% to 98% of the total population.⁶ An exception was made for Bodoland Territorial Council (established in 2003) where the ST population was 38%⁷. According to the 2001 census, the ST population in Darjeeling is 13% of the total population of the district.⁶ However, a sample check conducted by the Registrar General of India in October 2005 indicated that the ST population was 31.4%.⁷

Reservation for Scheduled Castes

Clause 2(1)

The SC population at 16% outnumber STs.⁶ Though 10 of 33 seats are reserved for STs in the GHC, there is no reservation for the SCs in the District Council.

Structure of the Sixth Schedule

In the last 15 years, three official reports have recommended structural changes in the Sixth Schedule (see Table 3). Also, some experts have criticised the concept of Sixth Schedule itself for encouraging ethnic divisions.⁸ Others have also

highlighted shortcomings such as lack of courts at village and other levels in some District Councils, dependence on state governments for financial grants, and allotments, etc.

The Bill does not address any of these structural issues. Its proposals are limited to include the hill areas of Darjeeling in the Sixth Schedule and some related provisions.

Variance in Powers of District Councils

The powers devolved to DCs vary. For instance, the Bodoland Territorial Council has more powers devolved to it as compared to the North Cachar Hills Autonomous District Council. Also, the additional powers of the GHC vary from the Bodoland District Council. The Ramachandran Committee recommended that the minimum extent of powers given to a DC should be spelled out in the Constitution.⁹

Table 3: Key Recommendations of the Commissions

Bhuria Committee, 1994	<ul style="list-style-type: none"> ▪ While the Sixth Schedule is useful for designing an instrument of self-determination at the district level for Scheduled Areas, some of its shortcomings are as follows: <ul style="list-style-type: none"> – Focuses entirely on the district tier resulting in no sub-district level tiers in some north-eastern areas – Power of dissolution of DC not accompanied by a mandate for reconstitution resulting in possibility of misuse – No express provision for holding election within six months of the date of the dissolution of a DC – No real autonomy conferred on DCs with relation to discussion on estimated receipts and expenditure
Venkatachaliah Commission, 2002	<ul style="list-style-type: none"> ▪ Have safeguards for minorities and use central funding for Plan expenditure instead of routing funds through state govts ▪ Allow DCs to implement centrally funded projects from various government departments ▪ Revive village councils with audits by the Comptroller and Auditor-General of India ▪ Make the Anti-Defection Law (with the Commission's recommendation) applicable to the Sixth Schedule areas ▪ Make issuance of multi-purpose identity cards for all citizens mandatory ▪ Set up a National Immigration Council to report on matters related to work permits, National Migration law, and the Citizenship Act
Ramachandran Committee, 2007	<ul style="list-style-type: none"> ▪ The minimum extent of powers of a DC need to be spelled out ▪ Engagement of all stakeholders, including women, in participatory planning implementation required ▪ Remove overlaps in functional responsibilities between the states and DCs ▪ Need to set up democratically chosen Village Development Committee (VDC) of about 10-20 members to undertake decentralized participative planning from the village and habitation level ▪ Need to constitute State Finance Commission for recommending ways to devolve funds to DCs and Regional Councils ▪ Need a system for ensuring accountability through continuous monitoring, audit and reform ▪ Governor should lead a high level review committee of state govt and district council to periodically review the functioning of the various bodies in the Sixth Schedule area, maintain oversight and report to the Union government

Sources: The National Commission to Review the Working of the Constitution (Chairperson: Shri M.N. Venkatachaliah); April 2002; Report of MPs and Experts to make Recommendations on the Salient Features of the Law for Extending Provisions of the Constitution (73rd Amendment Act, 1992 to Scheduled Areas, (Chairperson: Shri Dileep Singh Bhuria), 1994; the Expert Committee on Planning for the Sixth Schedule Areas and those not covered by Parts IX and IX-A of the Constitution (Chairperson: V. Ramachandran), September 2007; PRS

Notes

1. This Brief has been written on the basis of the Sixth Schedule to the Constitution (Amendment) Bill, 2007 and the Constitution (One Hundred and Seventh Amendment) Bill, 2007. The Bills were introduced in the Lok Sabha on November 30, 2007 and were referred to the Standing Committee on Home Affairs (Chairperson: Smt Sushma Swaraj). The Committee submitted its report on Feb 28, 2008.
2. Report of the Sub-Committee on North East Frontier (Assam) Tribal and Excluded Areas (Chairperson: Gopinath Bardoloi), July 28, 1947; Constituent Assembly of India Debates, Volume IX, 5th, 6th and 7th September, 1949.
3. Sixth Schedule to the Constitution of India.
4. Memorandum of Settlement, December 6, 2005.
5. 129th Report on the Sixth Schedule to the Constitution (Amendment) Bill, 2007 and the Constitution (107th Amendment) Bill, 2007, Standing Committee on Home Affairs, presented on Feb 28, 2008.
6. Census of India, 2001.
7. The Statement of Objects and Reasons of the Sixth Schedule to the Constitution (Amendment) Bill, 2007.
8. "Protective Discrimination and Crisis of Citizenship in North-East India," Sanjib Baruah, Economic and Political Weekly, April 26, 2003; "Indigenous and Tribal Peoples in World System Perspective," B.K. Roy Burman, Studies of Tribes and Tribals, July 2003, vol 1, no. 1; "Sixth Schedule and the Working of the District Councils in North-Eastern States," Dr. R.N. Prasad, Dialogue, Oct-Dec 2004.
9. The Expert Committee on Planning for the Sixth Schedule Areas and those not covered by Parts IX and IX-A of the Constitution (Chairperson: V. Ramachandran), September 2007.

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